MONTANA LEGISLATIVE HISTORY

Chapter 281 ~~19~~ 2001

Bill H _____ S 170 Original bill & history ✓ C

→ AND EXHIBITS from CD-ROM

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/05	✓C	1/10	✓C
_____	___C	_____	___C
_____	___C	1-23	✓C
Date Out 3/23	✓C	1/24	✓

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

	Returned to Senate		
4/05	Sent to Enrolling		
4/07	Returned from Enrolling		
4/10	Signed by President		
4/10	Signed by Speaker		
4/13	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 351		
	Effective Date: 10/01/2001 - All Sections		

SB 170 Introduced by Halligan *LC0115 Drafter: Lane*

Revise Child Abuse and Neglect Laws

By Request of Law, Justice, and Indian Affairs Interim Committee

8/28	Fiscal Note Needed		
12/22	Introduced		
12/28	Fiscal Note Requested		
1/03	First Reading		
1/03	Referred to Judiciary		
1/10	Hearing		
1/12	Fiscal Note Received		
1/15	Fiscal Note Printed		
1/24	Committee Executive Action--Bill Passed as Amended	9	0
1/24	Committee Report--Bill Passed as Amended		
1/26	2nd Reading Passed on Voice Vote	49	0
1/27	3rd Reading Passed	42	0
	Transmitted to House		
2/01	Referred to Judiciary		
3/05	Hearing		
3/23	Committee Executive Action--Bill Concurred as Amended	16	2
3/23	Committee Report--Bill Concurred as Amended		
3/29	2nd Reading Concurred	89	11
3/31	3rd Reading Concurred	90	10
	Returned to Senate with Amendments		
4/03	2nd Reading House Amendments Concurred on Voice Vote	49	0
4/04	3rd Reading Passed as Amended by House	48	0
4/04	Sent to Enrolling		
4/06	Returned from Enrolling		
4/06	Signed by President		
4/09	Signed by Speaker		
4/10	Transmitted to Governor		
4/20	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 281		
	Effective Date: 10/01/2001 - All Sections		

SB 171 Introduced by Glaser *LC0282 Drafter: Lane*

Revise Child Support Enforcement Program

By Request of Department of Public Health and Human Services

10/05	Fiscal Note Needed
12/26	Introduced
12/28	Fiscal Note Requested
1/04	First Reading
1/04	Referred to Public Health, Welfare and Safety

SENATE BILL NO. 170

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING MEDIATION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING SECTION 41-3-1014, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; ~~and~~

(f) recognize that a child is entitled to assert the child's constitutional rights~~.~~;

~~(2) It is the policy of this state to:~~

~~(a) protect, whenever possible, family unity;~~

~~(b)~~(g) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

~~(c)~~(h) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority ~~and~~ or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting ~~the~~ a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

~~(d)~~(i) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

~~(3)~~(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

~~(4)~~(3) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept

confidential except as provided by this section. Except as provided in subsections ~~(4)~~ (6) and ~~(5)~~ (7), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any

other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

~~(4)~~(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(5)~~(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(4)~~ (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(6)~~(8) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

~~(7)~~(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department ~~of public health and human services~~, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) ~~A~~ An abuse and neglect petition must be filed within ~~48 hours~~ 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to [section 14].

(4) The department ~~of public health and human services~~ shall make the necessary arrangements for the ~~youth's~~ child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-402;

(ii) temporary investigative authority, as provided in [section 7];

(iii) temporary legal custody, as provided in [section 11];

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-421;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief

that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

~~(1)~~(2) The county attorney, attorney general, or an attorney hired by the county ~~is responsible for filing~~ shall file all petitions under this chapter, except as provided in 41-3-303. ~~The~~ A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the ~~allegation~~ petition.

~~(2)~~(3) ~~Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The~~ Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

~~(3)~~(4) ~~A~~ An abuse and neglect petition ~~alleging abuse or neglect~~ is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

~~(4)~~(6) ~~The~~ Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the ~~youth~~ child named in the petition, if residing in the state, must be served personally with a copy of ~~the petition and summons~~ all petitions at least 5 ~~working~~ days before the date set for hearing. If the person or agency cannot be served

personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

~~(5)~~(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

~~(6)~~(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

~~(7)~~(9) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

~~(8)~~(10) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

~~(9)~~(11) ~~The~~ An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the ~~youth~~ child and the name and address of the ~~youth's~~ child's parents or guardian or person having legal custody of the ~~youth~~ child;

(c) state the names, addresses, and relationship to the ~~youth~~ child of all persons who are necessary parties to the action.

~~(10) The petition may ask for the following relief:~~

~~(a) temporary investigative authority and protective services, as provided in 41-3-402;~~

~~(b) temporary legal custody, as provided in 41-3-406;~~

~~(c) appointment of a guardian pursuant to 41-3-421;~~

~~(d) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or~~

~~(ii) appointment of a guardian; or~~

~~(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.~~

~~(11) A request for a determination that reunification services need not be provided pursuant to~~

~~41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.~~

~~(12) The petition may be modified for different relief at any time within the discretion of the court.~~

~~(13)~~(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(13) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order.

(14) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(15) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(16) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to

terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 5. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for ~~temporary investigative authority~~ immediate protection and emergency protective services -- order -- service.** (1) (a) In a case in which it appears that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for ~~temporary investigative authority~~ immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(2)~~(b) A petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected.

~~(3)~~(c) The petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department report stating in detail the facts upon which the request is based. The petition, affidavit, or report of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. ~~Except as provided in 41-3-403, the~~ The parents, if available in person or by electronic means, must be given an opportunity to ~~address~~ present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-401."

NEW SECTION. **Section 6. Show cause hearing -- order.** (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to [section 14] or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-411; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection

are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a local citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-404(2) are met. If not made at the show cause hearing, adjudication under 41-3-404 must be made within the time limits required by 41-3-404 unless adjudication occurs earlier by stipulation of the parties pursuant to [section 14] and order of the court.

NEW SECTION. **Section 7. Temporary investigative authority.** The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-401.

Section 8. Section 41-3-403, MCA, is amended to read:

"41-3-403. ~~Order for immediate protection of youth~~ Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. ~~(1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.~~

~~(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.~~

~~(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.~~

~~(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.~~

~~(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.~~

~~(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

(1) ~~Reasonable~~ The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount

concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services ~~are not required~~ if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; ~~and~~ or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

~~(4)~~(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(6) The court may grant the following kinds of relief:~~

~~(a) right of entry by a peace officer or department worker;~~

~~(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;~~

~~(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;~~

~~(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;~~

~~(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;~~

~~(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or~~

~~(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.~~

~~(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:~~

~~(a) limited emancipation;~~

~~(b) temporary legal custody;~~

~~(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or~~

~~(d) dismissal.~~

~~(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).~~

~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.~~"

Section 9. Section 41-3-404, MCA, is amended to read:

"**41-3-404. ~~Adjudicatory hearing~~ Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under [section 6]. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to [section 14] and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

~~(1)~~(2) ~~In the adjudicatory hearing~~ The court may make an adjudication on a petition under 41-3-401~~,~~ if the court ~~shall determine~~ determines by a preponderance of the evidence ~~whether~~, except as provided in the federal Indian Child Welfare Act, if applicable, that the ~~youth~~ child is a youth in need of care and ~~ascertain~~ ascertains, as far as possible, the cause. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Hearsay evidence of statements made by the affected child is admissible at the hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted

in state intervention and upon which disposition, case work, court review, and possible termination are based.

~~(2)~~(3) The court shall hear evidence regarding the residence of the ~~youth~~ child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the ~~youth~~ child.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the ~~youth~~ child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to ~~41-3-403~~ 41-3-402 or [section 6] must be vacated.

(b) If the ~~youth~~ child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within ~~30~~ 20 days, as provided in 41-3-406(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in ~~41-3-403(6)~~ 41-3-402(2).

(6) (a) Before making an adjudication, the court shall make written findings on issues including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the

child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 10. Section 41-3-406, MCA, is amended to read:

"**41-3-406. ~~Dispositional~~ Disposition -- hearing ~~--temporary legal custody~~ -- order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to [section 14] or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-404. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-404. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

~~(1)~~(3) If a ~~youth~~ child is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ child:

(a) permit the ~~youth~~ child to remain with the ~~youth's~~ child's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the ~~youth~~ child and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ child;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

~~(2) To grant temporary legal custody, the court shall make a finding that:~~

~~(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and~~

~~(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.~~

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to [section 11(1)] or subsection ~~(2) or (3)~~ (4) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an~~

~~attorney hired by the county shall petition for one of the following:~~

~~(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;~~

~~(b) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right of adoption; or~~

~~(ii) appointment of a guardian pursuant to 41-3-607;~~

~~(c) long-term custody pursuant to 41-3-412;~~

~~(d) appointment of a guardian pursuant to 41-3-421; or~~

~~(e) dismissal.~~

~~(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).~~

~~(7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.~~

~~(8)~~(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

NEW SECTION. **Section 11. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-404, the court may grant temporary legal custody under 41-3-406 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) planned alternative permanent placement pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(4) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(6) In implementing the policy of this section, the child's health and safety are of paramount concern.

(7) A petition requesting temporary legal custody must be served as provided in 41-3-401.

Section 12. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) (a) (i) ~~A~~ Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-403, 41-3-406(5), or [section 11(1)]; and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first~~, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian~~.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed, the court shall make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was

not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan. ~~must contain the:~~

~~(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;~~

~~(b) extent to which the parent or guardian cooperated and used the services provided;~~

~~(c) status of the child, including the child's mental, physical, and psychological health; and~~

~~(d) plan for permanency for the child, including specific times for achieving the plan.~~

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. ~~If the~~ The court ~~finds that~~ shall make findings on whether the permanency plan is in the best interests of the child~~, the~~ and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan~~, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed~~.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the ~~provisions~~ options provided in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) ~~If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following~~ Permanency options include:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;

(b) appointment of a guardian pursuant to 41-3-421; or

(c) ~~long-term custody~~ planned alternative permanent placement of a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a relative;

~~(i)~~(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(ii)~~(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

~~(iv)~~(v) the child is in a group of siblings, at least one of whom meets the requirements of subsections ~~(6)(c)(v)(A)~~ (6)(c)(vi)(A) through ~~(6)(c)(v)(D)~~ (6)(c)(vi)(D), and the best interests of the child will be met by continued placement in the sibling group in ~~long-term foster care~~ planned alternative permanent placement; or

~~(v)~~(vi) the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other permanent placement ~~termination of parental rights to the child is not in the child's best interests~~ options for the child have been considered and found not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the

long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ the planned alternative permanent placement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 13. Section 41-3-420, MCA, is amended to read:

"41-3-420. Treatment plan -- contents -- changes. (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to [section 14]; or

(c) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in ~~a~~ temporary medical ~~facility or a facility for protection of the youth~~ or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

NEW SECTION. **Section 14. Stipulations.** Subject to approval by the court, a parent may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; or

(3) the disposition.

Section 15. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) ~~the child is at least 12 years old or~~ the child is in a group of siblings~~, at least one of whom is at least 12 years old,~~ and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except ~~a~~ for the department's provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided

in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any ~~court-appointed~~ court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

NEW SECTION. **Section 16. Repealer.** Section 41-3-1014, MCA, is repealed.

NEW SECTION. **Section 17. Codification instruction -- code commissioner instruction.** (1) [Sections 6, 7, 11, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 6, 7, 11, and 14].

(2) The code commissioner is instructed to rearrange and renumber the following sections in Title 41, chapter 3, part 4, in the following order:

41-3-401,

41-3-403,

41-3-402,

[section 6],

[section 7],

[section 14],

41-3-404,
41-3-406,
[section 11],
41-3-420,
41-3-421,
41-3-412,
41-3-413,
41-3-411.

(3) The code commissioner is instructed to renumber:

(a) 41-3-303, 41-3-409, 41-3-1115, 41-3-1160, and 41-3-1161 as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to the renumbered sections;

(b) 41-3-408 as a new part in Title 41, chapter 1, and to insert "of public health and human services" after "department" in subsection (1) of the renumbered section;

(c) Title 41, chapter 3, part 7, as a new chapter in Title 52;

(d) Title 41, chapter 3, part 11, as a new part in Title 52, chapter 2; and

(e) Title 42, chapter 8, as a new chapter in Title 52.

NEW SECTION. **Section 18. Coordination instruction.** (1) If ___ Bill No. ____ [LC 261] and [this act] are both passed and approved, then ____ Bill No. ____ [LC 261] is void.

(2) If __ Bill No. __ [LC 518] and [this act] are both passed and approved, then 41-3-401(6) contained in [this act] must read as follows: "(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in [sections 1 and 2 of LC 518]."

NEW SECTION. **Section 19. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

FISCAL NOTE

Bill #: SB0170 **Title:** Revise child abuse and neglect laws

Primary Sponsor: Mike Halligan **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director 1/12/01 Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
General Fund	$10,264	$10,576
Net Impact on General Fund Balance:	**$10,264**	**$10,576**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. There were 203 adoptions in FY 2000, of which 176 were children age 12 or under.
2. It is anticipated that an average of 26 children per year will experience delays in being adopted as a result of this bill and will remain in Foster Care longer. The average length of the delay for these children is six months.
3. The average cost per case for Foster Care is $4,148 and the average cost per case for Subsidized Adoption is $3,401 and the difference between the two is $747
4. A 3% annual adjustment for inflation results in an average cost of $792 for FY 2002 and $816 for FY 2003.
5. The additional cost will be 26 multiplied by $792 divided by 2 (for only six months) for an impact of $10,296 for FY 2002. For FY 2003, the impact will be 26 times $816 divided by 2 for an impact of $10,608.
6. Operational costs for printing new forms for required notification are estimated at $5,000 per year and mediation costs for the alternative dispute resolution of $5,000 per year.

SB 170

7. There will be an estimated savings of $10,032 per year based on the perpetrator being removed from a two-parent household. For these situations, the child will not be removed from the home and immediately placed in foster care. This cost is estimated as follows: 22 children (estimated children that would not be removed because perpetrator is removed) times 30 days times $15.20 (weighted average Foster Care Rate based on 70% client population under age 12 and 30% 13 or older) equals $10,032.

FISCAL IMPACT:

	FY2002 Difference	FY2003 Difference
Expenditures:		
Operating Expenses	$10,000	$10,000
Benefits	264	576
TOTAL	$10,264	$10,576
Funding:		
General Fund (01)	$10,264	$10,576
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	$10,264	$10,576

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 10, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 132, SB 170
Executive Action: SB 85

HEARING ON SB 132

Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA

Proponents: **Sharon Hoff-Brodowy, MT Catholic Conference**
Steven Ertelt, MT. Right to Life
Julie Millam, Coalition of Montana

He said that if everyone was to look at the delicate balance, where they are trying to provide a safe haven in extreme cases, where young people are traumatized and are using this avenue then they are not trying to encourage abandonment by any way, shape or form. He added that this becomes a delicate balance due to the education component, with developing hotlines or publishing materials in newsletters to get the word out.

HEARING ON SB 170

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **Chuck Hunter, Administrator Child & Family Services of D.P.H.H.**
Ann Gilkey, Court Assessment Program
John Larson, District Judge
Jeff Weldon, Chief Legal Counsel - Dept. of Public Instruction
Colleen Murphy,
Tom Ebzery, St. James Healthcare Butte, MT.
Tara Huber, State Coordinator with CASA/GAL of MT.

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA MT, said that many of the changes in this bill are attempting to deal with federal legislation in the adoption of the Safe Families Act that has essentially accelerated the time frames, which people have to get their act together when their children, who are found to be abused and neglected. He said that the most important provision is the early hearing on abuse and neglect petition.

He pointed out that this bill discusses the removal of the child within ten days or sooner and if they can get into court. He said that for rural areas where someone may not have a judge, within a two week period, they would be able to use telecommunications, which they use in many other states to get a hearing regarding the removal issues at an earlier time rather than twenty days.

He mentioned the importance of appointing an attorney to the case because this is a stage where a parent's liberty and privacy interest in parenting their family are at risk. He added the need for Temporary Investigative Authority (T.I.A.) and how temporary legal custody, petitions for guardianship, long term custody and petitions for determination of parental rights are all listed in one area where everyone is able to find them.

Within T.I.A. there is a clear and convincing evidence for termination stages and preponderance of the evidence in temporary legal custody.

He said that the child's health and safety is a paramount concern throughout these proceeding and that the liberty interests of parents are constitutional protected rights, but once they have proven if abuse and neglect has occurred then that is when the child's health and safety becomes a major concern.

Proponents' Testimony:

{Tape 2; Side A}

Chuck Hunter, Administrator of Child & Family Services Division for Department of Health and Human Services, said that they went around the state to nine different locations, held public meetings about child abuse and neglect laws and asked the various parties involved in the public, people who work with this system, and they found that this law has been amended many times and is hard to follow. He added that with reorganization of this bill there are a number of things that provide clarity of time frames and for the rights and responsibilities of the parties involved with the proceedings.

He stated that this bill is proposing so limit the period to a single 90 day period and it offers the court and the department time to get involved with the families. In cases where physical or sexual abuse has taken place they remove the child from the home and place them in a protective setting and the Alternate Dispute Resolution (A.D.R.) is being added to this bill for these cases.

Ann Gilkey, Court Assessment Program, handed in her testimony. **EXHIBIT(jus07a01)**

John Larson, Fourth Judicial District, District Judge, handed out a memo offering amendments. **EXHIBIT(jus07a02)** He explained the amendments that were handed out and he added that reasonable efforts was a word that is heard often and it is hard to define. He then handed out information on Reasonable Efforts. **EXHIBIT(jus07a03)**

He asked the committee to consider the guardianships of these families and the need for this bill and how mediation, Alternative Dispute Resolution (A.D.R.) and family group conferencing techniques have been proven very effective in courts.

Jeff Weldon, Chief Legal Counsel for Office of Public Instruction, said that federal law generally takes the approach that school officials cannot disclose information about students without parental consent and his concern is that the added language may conflict with federal law. He said that information from school officials would be invaluable in this effort.

Colleen Murphy, Executive Director of Montana Chapter of Association of Social Workers, felt that the high points of this bill deal with the health and safety of the child. She said that the idea of removing the perpetrator and not the child seems fair because it is extremely disruptive for children to be removed from their homes. She stated the new time line limits in rural areas, which are difficult for people who may have scarce resources and a long way to travel. She said there is a need to create more opportunities for children to be place more quickly.

Tom Ebzery, Attorney on behalf of St. James Healthcare, handed in his testimony. **EXHIBIT(jus07a04)**

Tara Huber, State Coordinator for Casa GAL of Montana, said that this is a Guardian Ad Litem program and she is in support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. RIC HOLDEN asked if a fiscal note should be present with the bill. **Chuck Hunter** said that he had talked about the fiscal impact and believed the costs associated with this bill were unusual enough to rise to a level of need to identify new resources or services.

SEN. HOLDEN questioned if with movement of a child, out of a troubled home, would the state incur some sort of cost when the child is abandoned. **Chuck Hunter** said that is correct.

SEN. HOLDEN asked if the costs would then be taken on by the parents or whichever parent is being removed from the home. **Chuck Hunter** said yes that would be correct.

SEN. HOLDEN stated that someone should look over last years' estimates of how many children were moved out of their homes and what the costs were because those costs would no longer be expended. **Chuck Hunter** remarked that it would be used in a various small percentages of cases. He said that only when there was the type of abuse that represented an on-going threat to the child, a definitive act that the court felt could be pinned down

and was appropriate in that case to remove the perpetrator instead of the child.

SEN. HOLDEN commented that possibly advancing legislation, give a more positive favor with the legislature would also indicate the department's willingness to recognize when the department does save money with pieces of legislation.

Chuck Hunter mentioned the issue of A.D.R. and it could be found on lines eight through 12.

SEN. HOLDEN questioned if this bill would require that. **Chuck Hunter** said it does not require that.

SEN. HOLDEN asked if it is not in the bill wouldn't his fears be unfounded. **Chuck Hunter** said that a district court judge could decide in each and every case to order mediation.

SEN. HOLDEN asked if an amendment to this section is needed to clarify that issue. **SEN. HALLIGAN** answered the fears that are being raised deal with some cases where a district court judge, under the current language, would allow the judge to have that discretion, they could say they are not going to hear any of these cases and would appoint someone to be the A.D.R. person in this jurisdiction.

SEN. GRIMES asked if abuse has occurred, but it is still being litigated as to who the responsible party is. **Judge Larson** answered yes, but not until after adjudication.

SEN. GRIMES asked if there would be a permanency hearing even if there is still litigation. **Judge Larson** answered that is correct and that it might be focused more on the child than on the family.

SEN. GRIMES asked if that permanency hearing would consider elements of the litigation. **Judge Larson** said yes all of the parties would be able to participate.

SEN. GRIMES asked if there was a significant change from how they currently function, a child has been in foster care for a length of time, is that rearranged and clarifying current practice. **Judge Larson** commented that this is a federal statute that is followed. He added that a foster care review board should look at these placements every six months.

SEN. GRIMES asked if an amendment could be summarized in the middle of that page. **SEN. HALLIGAN** said that if there is one child under 12 years of age there could be a guardianship.

SEN. GERALD PEASE asked if the federal Indian Child Welfare Act and this bill go hand in hand. **SEN. HALLIGAN** answered the Indian Child Welfare Act has never been referenced in the child abuse and neglect statutes, but in fact the Indian Child Welfare Act is very critical to this and it needs to be referenced. He mentioned that the federal Adoption and Safe Families Act recognized the existence of the Indian Child Welfare Act when it dealt with the 12 month permanency hearing and the termination after 15 months. He added that these are to be read together and these time frames do apply on reservations as well.

SEN. PEASE asked if it would be dangerous if some people had something against another parent, for example, if a parent reported to the school district an abuse was taking place, would this open it up for the procedure to occur. **SEN. HALLIGAN** said that teachers and administrators are required to report abuse. The language is personally identifiable from the education records.

SEN. HOLDEN asked the chairman to request the department to send up a fiscal note for this piece of legislation. **CHAIRMAN GROSFIELD** replied that a fiscal note can be requested, however, his sense was that they may end up with significant amendments to this bill.

SEN. GRIMES asked if federal requirements required all of the language about immediate protection. **SEN. HALLIGAN** said there is no change to existing law with respect to this.

Closing by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, summarized that two sessions ago the bill went through the process that took the hearing from 20 days down to five days and he had changed it back to 20 days after it was pointed out that they could not comply with this in rural areas. He said that this is a major change of the bill allowing a period of time to have the issue discussed and attorneys and social workers working on the case.

{Tape 3; Side A}

He stated that they do not know how much abuse is going to go on throughout the state and the normal case load is about 3,500 children, who are in care right now. The child welfare agencies could possibly go through a particular case dealing with removal

of a child or they may have worked with the families over the years and they have family conferences to work with them. He said there is a need to have the services for families available, otherwise they cannot terminate due to the constitutional rights that were not protected all the way through.

EXECUTIVE ACTION ON SB 85

Motion: **SEN. GRIMES** moved **SB 85 BE AMENDED. EXHIBIT(jus07a05)** Amendments were handed out.

Discussion:

Valencia Lane, Legislative Staffer stated that this is the very same amendment requested by the clerks of district courts at the hearing and requesting that there be a delayed effective date and an applicability date and that is included in the number eight amendment, which is reflected in the gray bill in the title because it has to go within the title. The other changes are internal reference changes and basically they clarify the responsibility of the clerks of district court as to making these lists for all of the courts.

CHAIRMAN GROSFIELD asked if the effective date was October 1 and if there was any particular reason for that date. **Ms. Phippen, Clerk of District Court,** answered that there was not a particular reason for that. She said that since there was not an effective date on the bill, they thought that the effective date should be October 1, 2001 therefore the complete jury list provided by the department would have to be submitted on the second Monday of June 2002.

CHAIRMAN GROSFIELD asked if they were comfortable with the development of the technology taking place by October 1, 2002. **Valencia Lane** said that the attempt was to delay the effect by one year. She stated that if they make it effective sooner, so funds can be expended if needed, then the law has changed and you have to start preparing the jury list immediately from the drivers license list.

CHAIRMAN GROSFIELD said that they should not be stuck having to wait around until October 1, 2002 before they can do anything. **Valencia Lane** assumed they are already working on the computer programs with assistance from the court administrator's office.

Ms. Phippen mentioned that a few counties have a pilot program regarding jury selection, but it has not been integrated with the Department of Justice and the Motor Vehicle Registration and the I.D. bureau.

The Supreme Court of Montana
Office of the Court Administrator
Patrick A. Chenovick

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 01/10/01
BILL NO. 170

COURT ASSESSMENT PROGRAM
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TESTIMONY IN SUPPORT OF SB 170
Submitted by Ann Gilkey
Court Assessment Program
January 10, 2001

The current statutes addressing child protective servcies are confusing and do not provide enough guidance to courts and families involved in the system. Further, federal law (Adoption and Safe Families Act) requires all states receiving federal funds for foster care to shorten the timelines for permanency for abused and neglected children, enhance safety considerations for children, while ensuring that states are making every reasonable attempt to keep children with their parents. Montana implemented the basic requirements of ASFA last session, but I believe that the laws need to be amended to better comply with the intent of the federal law and assist Montana families with more legal safeguards.

Major provisions of SB170 are:

- General reorganization and renumbering of statutes;
- Focuses state policy on health and safety of children (Sections 1, 5, and 8);
- Clarifies that a child's school records may be shared with persons with a need to know the information and drug treatment records may be shared only as otherwise allowed by federal law (Section 2);
- Requires an initial court hearing within 10 working days of an emergency removal of a child from the child's home (Section 3 and 6);
- Clarifies the types of abuse and neglect petitions, when they may be filed, states the burdens of evidentiary proof, and makes repeated reference to the Indian Child Welfare Act, as it differs from state law (Sections 4 and 5);
- Allows for resolution of matters outside of the courtroom by allowing for the use of standing masters to conduct hearings and alternative dispute resolution to facilitate agreements (Section 4);

(Over)

SB 170
Exhibit 1

- Provides for enhanced notice requirements to parents at various stages and in various documents, including the reasons for an emergency removal, time lines that must be adhered to, and the parents rights and responsibilities (Sections 4 and 13);

- Allows testimony at the initial hearings to be by electronic means, when necessary (Sections 5 and 6) ;

- Describes when temporary investigative authority should be requested by the state and limits an order for TIA to 90 days (Section 7);

- Clarifies what might constitute reasonable efforts to provide reunification services. When there is a judicial finding that such efforts need not be made, provides that the burden of evidentiary proof must be by clear and convincing evidence (Section 8);

- Ties the adjudicatory hearing to the show cause hearing and requires that it be held within 90 days of the show cause hearing (Section 9);

- Requires that a dispositional hearing be held within 20 days of an adjudication and clarifies the procedure for a dispositional hearing (Section 10);

- Clarifies purpose of permanency hearing (Section 12);

- Deletes the 12 years of age requirement for a child to placed in long term foster care or guardianship (Sections 12 and 14); and

- Clarifies how and when stipulations may be used (Sections 13 and 14).

I urge your support of SB 170.

John W. Larson, District Judge
Fourth Judicial District Dept. 3
Missoula County Courthouse
Missoula, MT 59802
(406) 523-4773
(406) 523-4739 FAX
jlarson@co.missoula.mt.us

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 01/10/01
BILL NO. 170

MEMO

TO: Senator Mike Halligan
FROM: John W. Larson
RE: Amendments to S.B. 170
DATE: January 9, 2001

I will offer amendments consistent with A.B.A. Guidelines and my testimony on S.B. 366 (last session)

Amendments to S.B. 170 From September 13, 2000, version LC0115

1. Section 41-3-303 2(g)
   Following: "if an attorney, to file"
   Add: "abuse and neglect petitions and"

2. Section 41-3-101
   Add: (4) all children have the right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute.
   (Source National Council of Juvenile & Family Court Judges Permanency Guidelines)

3. Section 41-3-401
   Page 9, line 21
   Following: (a) the
   Strike: "state"
   Insert: "court"

4. Section 41-3-401
   Page 9, line 22
   Strike: "the permanent placement of a child"
   Insert: "whether the state has made reasonable efforts to prevent placement, reunify the family, or secure a new permanent home for the child"

5. Make guardianship age limit amendment retroactive to guardianship established post S.B. 366 -- 1999 Session

SB 170 Ex. 2

REASONABLE EFFORTS TO PRESERVE FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 01/10/01
BILL NO. 170

Require Reasonable Efforts: We recommend that State law require the court to determine whether the State has made reasonable efforts to prevent placement, reunify the family, or secure a new permanent home for the child.

Child's Health and Safety Paramount: We recommend that State law require that, in the implementation of reasonable efforts, the child's health and safety be the paramount concern.

Reasonable Efforts to Preserve and Reunify Families: We recommend that State law require that, in determining whether the State has made reasonable efforts to prevent placement and reunify the family, courts consider whether services to the family have been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, State law should require the court to consider the following:

a. Dangers to the child and the family problems precipitating those dangers;
b. Whether the agency has selected services specifically relevant to the family's problems and needs;
c. Whether caseworkers have diligently arranged those services;
d. Whether appropriate services have been available to the family on a timely basis; and
e. The results of those intervention.

Reasonable Efforts to Finalize Placement: We recommend that, in determining whether the State has made reasonable efforts to make and finalize a new permanent home for the child (in cases where reunification is no longer the child's exclusive permanency plan), State law instruct courts to consider whether services to achieve that goal have

SB 170
Ex. 12

been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, the law should require the court to take into account the following:

a. Whether the agency has identified an appropriate strategy to make and finalize a new permanent placement for the child;
b. Whether there has been diligent arrangement for the provision of those services; and
c. Whether adequate and appropriate services have been available on a timely basis.

Reasonable Efforts Include Concurrent Planning: We recommend that State law indicate that reasonable efforts may include concurrent efforts both to reunify a family and to ensure that an adoptive or other alternative permanent home will be available if needed by the child.

Procedure for Determining Whether There Have Been Reasonable Efforts to Preserve the Family or to Finalize a New Permanent Home: We recommend that State law require that:

a. The agency should submit a sworn statement prior to any judicial hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. This statement, which should be submitted to the court and the parties at least 5 days in advance of the hearing, should describe the reasonable efforts made by the agency or the rationale for not making such efforts.
b. Following the hearing, the court will determine whether or not the agency made reasonable efforts and enter brief findings describing the efforts.

Procedure for Finding that Reunification Services Are Not Required: We recommend that at any time, upon motion of any party or on the Court's own motion, State statutes or court rules authorize the court to determine that reunification services are not required.

SB 170

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 01/10/01
BILL NO. SB 170

Testimony of St. James Healthcare

St James Healthcare supports SB170 and a number of its employees participated with others in the Butte Community on advancing ideas on the subject, several of those are contained in the Bill before you.

The Bill obviously will need some tinkering as the Bill sponsor Senator Halligan has already expressed & this Committee as it has done in the past in the wise one to do this.

Senator Halligan is to be commended for his leadership in this subject for a good long time & I would like to express our appreciation to him.

Finally I would like to place in the record the Butte Philosophy statement in support of Children which in part is embodied in this Bill, as well as a long list of the Butte Community Committed to this philosophy.

I hope you will support the Bill.

EXHIBIT

Submitted by St James Healthcare - Butte

SUBMITTED BY
Tom Ebzery

Butte Philosophy statement in support of Children

It is our philosophy that the safety and welfare of children should take precedence over all else, including the preservation of the family. It has been the experience of educators, health professionals, and social service agencies, that family preservation at times, takes precedence over the child's' safety and well being. Key to this philosophy is very early evaluation and intervention.

We believe that putting children's safety and well being first would greatly increase the chances for children in our community to live a healthy, safe, and productive life.

Using this philosophy as the foundation for social services we believe the following resources are needed:

1 There is a serious need for safe temporary placement of children who are removed from a dangerous environment which may include physical, sexual abuse or serious emotional and physical neglect. This type of temporary shelter needs to be financially supported through state funds. When this type of resource is present it allows agencies to rescue a child from an unsafe and seriously neglectful living environment while assessment takes place and a permanent solution can be found.

2 There is a significant need for permanent placement of children who cannot return home for safety/ welfare reasons. Foster families are one such placement. In theory, foster families would be the answer ,but there are not enough foster families to meet the need. Professionally staffed permanent placement is needed for children whose families have been involved in child abuse, sexual abuse and serious neglect for generations. This(ese) permanent place(s) need to be financially supported by state funding.

3 As children's cases continue to become more complex with mental, emotional and physical difficulties there needs to be financial investment in a number of other services:

- more training, education and accountability for local department of family service staff;
- more education and resources for foster families;
- intensive services for families with destructive addictions, mental health illness, and significant lack of parenting skills
- recruitment for adoptive placements and on-going support for the family and child
- increased in family based services (To drive home the point: presently there are 800 cases of child abuse/neglect annually under investigation in Butte and approximately 30 slots in community family based service programs.)

4 Significant changes in the Montana statutes need to be made to reinforce that children's safety and well being comes before family preservation at all cost.
These include but are not limited to:

-allowing information to be shared on a "need to know" basis ensuring that confidentiality is preserved in order to safe guard the child;
-school attendance issues need to be addressed including the possibilities of financial fines;
-family court should be available as an alternative to youth court;

We believe the system as it exists now can best be described as the "Fram Oil Filter Syndrome" meaning pay me now or pay me later. It is our belief that the safety and WELL BEING of our children should be addressed now, not later,when we pay more and have little possibility of saving a child's life.

This philosophy is supported by a broad spectrum of the Butte Community

Hon. James Purcell	District Court Judge, Second Judicial District
Hon. John Whelan	District Court Judge, Second Judicial District
Robert McCarthy	Butte Silver Bow County Attorney
Sam Cox	Attorney, County Attorney's Office
Ann Shea	Attorney, County Attorney's Office
Dr. Jessie Salisbury	Pediatrician
Dr. Ken Graham	Pediatrician
Kate Stetzner	Superintendent of Schools, Butte
Marko Lucich	Chief Probation Officer, Butte
Bob Butorovich	Sheriff, Butte silver Bow
Steve Gallus	State Representative, Butte
Fritz Daily	School Counselor
Bob Haley	Director of Butte Literacy and Even Start
Karen Sullivan	Community Relations Director, St. James Community Hospital
Paddy Ferriter	AWARE case manager
Michelle Miller	Social Worker, St. James Community Hospital
Ann Lucus	RN St. James Community Hospital
Dot Warner	RN, Butte School District
Jon Miller	Boilermaker, Butte
Ed Heard	Truancy Officer, Butte School District
Tracy McArthur	Prevention specialist, Butte Health Department
Ed Randall	Case Manager, Butte Health Department
Glen Granger	Probation Officer, Butte
Ellen Donahue	Director of Safe Space, Domestic Violence Shelter
Lori Stiffler	Social Worker, Butte School District
Tom Billteen	Probation Officer, Butte
Dan Foley	Probation Officer, Butte
Jennifer Briggs	Probation Office, Butte
Cindy Stergar,	Director, Butte Community Health Center
Bonita Tahija	Case Manager, Career Futures, welfare to work programs
Jerome McCarthy	Detective, Butte Police Force
Margaret Flemming	Citizens Review board Member
Sr. Sharon Smith	Holy Family Parish
Miriam Young RN	Manger of Pediatric and new born unit, St. James Hospital
Irene Humber	Real estate owner
Hal Volgelsang	Retired FBI
Mike Clements	Butte Department of Family Services, Director
Dan Dennehy	health Officer for Butte Silver-Bow
John Christy	Police officer for Butte public schools
Jerry Williams	Police officer for Public Housing
Betty Lester	School Counselor for Greeley and Kennedy schools
Jack Skinner	School Counselor for Emerson School
Tom Roberts	School counselor for Whittier School
Mary Kay Starin	Attorney, Starin and Joyce

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 23, 2001 at 9:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 25, 2/2/2001; SB 222, 2/2/2001
Executive Action: HB 25; SB 25; SB 29; SB 128; SB 170

{Tape : 2; Side : A}

EXECUTIVE ACTION ON SB 170

Motion: **SEN. MIKE HALLIGAN** moved **AMENDMENTS ON SB 170.**

Discussion:

SEN. MIKE HALLIGAN said a few of the changes were requested by Judge Larson. He wanted mediation struck and have alternative dispute resolution included because of the various forms to handle the cases outside of court. They fixed an internal reference in amendment #2. The judge also took the Constitutional right and put it in a policy section. In amendment #5 the court made decisions in the permanency hearing, not the state.

Valencia Lane, Legislative Staffer, also clarified what the amendments said. She began with #6 saying it clarified the language as to what the court could do. Amendments #7, #8, and #9 referenced the 12 year old.

SEN. HALLIGAN informed the committee that the old statute said if a child was younger than 12, they were not to go into guardianships, but should be adopted. However, statewide, many grandparents, aunts, and uncles, were parenting children who retained a bond with their parents. Therefore, it was not a good thing to terminate that, and they still could proceed with a guardianship with a family member. The struck language reflected those findings.

Ms. Lane said those were the substantive changes and that 41-3-413 was a very short section in existing law, and the substance of that section was not needed. That clarification was put into the repealers.

SEN. HALLIGAN clarified that the 10 day period was retained in the case of a removal of a child. If a removal was not necessary, the 20 day process could still be used to show-cause. A hearing could be used if requested. Attorneys would be appointed to parents for aggravated circumstances cases earlier. The court could not delay on that issue and wait for filing later petitions because parental rights were at risk at that point. It created an earlier hearing process. The alternative dispute resolution kept people out of court a bit more. The amendments clarified the use of Temporary Investigative Authority (TIA) because it tended to be used somewhat endlessly. It called for a 90 day investigation with a higher standard applied if more time was needed. A temporary legal custody would be the higher standard rather than probable cause. It forced the state to do

things quicker and prove its case. The bill clarified which petitions should be filed, when they were filed, who had to prove what, and when it had to be done.

SEN. GRIMES asked if amendment #4 was a significant change of policy in those permanency hearings.

SEN. HALLIGAN replied it was current law. The state had to make reasonable efforts before a child was ever removed. They also had to make reasonable efforts to reunify once a child was taken away. Also a reasonable efforts standard was applied in permanency if it was determined parents could not do it. It did not change existing law.

SEN. GRIMES questioned the wording that "the state had made reasonable efforts to prevent placement."

SEN. HALLIGAN said it should say, "prevent removal", but the placement indicated foster or state placement.

Vote: Motion **carried 7-0, SEN. DOHERTY,** and **SEN. HOLDEN** excused.

Discussion: (on **SB 170** as amended)

SEN. JERRY O'NEIL referred to page 17 line 29 of the bill regarding hearsay evidence by the affected child being admissible at the adjudication hearing. He argued this would change the rules of evidence to some degree. Current law allowed an excited utterance as hearsay. He presented a scenario of a social worker using leading or suggestive questioning unintentionally and using that at the hearing without the child's presence. In those cases, he wanted the social worker to be able to bring a tape recorder when the child was interviewed to provide evidence on what questions where asked and how they were asked. To open it up to any hearsay evidence would be a big mistake he thought.

SEN. HALLIGAN said it was a good point, but existing law was not being changed in the bill, despite an underlying statement. It was simply reorganized. In a probable cause hearing, hearsay evidence of a child, or anybody, was already allowed in the TIA stage. Earlier in the bill it talked about the applicability of preponderance of evidence, rules of evidence, and rules of civil procedure. It did not change the requirement to disallow hearsay evidence at the temporary legal custody stage or the termination stage. He clarified it was only in reference to the 90 day TIA hearing as stated above in line 18. It did not change the standard for any other hearings.

SEN. HALLIGAN looked up the place in statute, 41-3-403, sub c, "hearsay evidence of statements made by the affected youth is admissible at the hearing or at the contested hearing proceeding under this rule and the rules of civil procedure." It was not later repeated. He indicated they were very concerned about that and there was no change in hearsay. He explained that in a criminal action, hearsay statements could be heard from anyone to deal with the issues. In family law, it was not a probable cause, nor an adjudication of abuse and neglect based on hearsay statements, other than the ones that were not hearsay, such as the excited utterance.

SEN. O'NEIL said he didn't have a problem with hearsay use at a show-cause hearing, but he did have a problem with it at adjudication, 90 days after the show-cause hearing. He was leery of bringing out unmitigated hearsay at this stage that could remove a child from a family.

Ms. Lane pointed out that in the new section 6 of the bill on page 12, line 6, the hearsay information was allowed at the show-case hearing, as well as at the adjudicatory hearing. It would be a policy decision of the committee to decide if hearsay evidence would be allowed at both hearings. Montana Rules of Civil Procedure stated that as to rules of evidence, the legislature could make rules on the admissibility of hearsay evidence.

SEN. HALLIGAN asked for correction, but he understood that this language was not proving that a child was a youth in need of care; it was a higher standard.

Ann Gilkey, Court Assessment Program, felt that **SEN O'NEIL** was correct. It did add hearsay past the show-cause hearing. She felt the evidence currently allowed at the show-cause hearing was vital, but agreed that the committee would have to make the policy decision about allowing more evidence at the adjudicatory stage. She acknowledged that it had become practice to use hearsay evidence at the adjudication hearing.

SEN. O'NEIL suggested changing the bill. He wanted hearsay evidence given by professionals to be video or audio taped after the show-cause hearings.

CHAIRMAN GROSFIELD suggested that this change would take some time, so they would not take action on this bill until another day in order for more information to be found. He asked for other issues to also be considered in that time.

SEN. PEASE asked about the tie-in between the children on reservations that have some connections with social services

outside the reservation. He referred to the amendment just passed, page 2, line 3 asking if it related back to grandparents or aunts and uncles on the reservation.

SEN. HALLIGAN clarified that the section had moved, but that the existing law had not changed. Any agreements between the tribes and the state in terms of administering the programs remained the same. Where tribes were contracting and handling their own affairs, they would dictate how the law was administered on the reservation. State social workers would not interfere in that. Where tribes had not contracted with the state, they still used tribal social workers. This did not change the current practice, but attempted to strengthen it by mentioning the existence of the Indian Child Welfare Act, which had never been stated in this statute prior to this.

CHAIRMAN GROSFIELD inquired about the possibility of a variable time-line that considered the rural areas as well as the urban centers.

SEN. HALLIGAN said they had worked to address that issue. The rural areas had concerns about access to judges. To help that situation, telephonic hearings had been introduced. The time-frame regarding the removal of a child had been set within 10 days, unless both parties agreed to waive the time frame. If a hearing (live or telephonic) could be scheduled sooner, than that was fine. Without a removal of a child, then the current statutory rule of 20 days applied. He felt a floating time frame would not work to meet the due process requirements.

CHAIRMAN GROSFIELD asked if there was any incentive to hold the hearing before the 10 days.

SEN. HALLIGAN mentioned that the Supreme Court had adopted the rule that these cases were the top priority and they would be heard first. Many district courts also tried to use that rule of thumb. However, when criminals with Constitutional issues come up against these cases, usually the criminals in jail had priority. It could be stated in the statute that district courts ought to hear these cases first, but most of them treated them as high priority anyway.

SEN. GRIMES mentioned that people involved with the Casey Program and others were concerned about time delays and the fiscal note mentioned that 10 percent would be delayed longer. He asked if that was because of mediation. He assumed the time frames were there to help the process along.

SEN. HALLIGAN disagreed with the fiscal note and did not sign it because there would be no delays. Even using alternative dispute resolution would put the case to finality quicker.

{Tape : 2; Side : B}

Ms. Gilkey also didn't agree with the fiscal note. The alternative resolution piece would not cause delays, but would expedite the whole program. People would agree without having to go to court, an adversarial environment.

CHAIRMAN GROSFIELD said **Ms. Lane** pointed out that on lines 13 and 14 of the bill, that the courts had to give highest preference to these cases. He again asked for other issues regarding the bill.

SEN. HALLIGAN recalled that in the testimony of **Jeff Weldon from the Office of Public Instruction** there might be a problem with the sharing of school records or identifying information between school districts and social workers in these cases. **Mr. Weldon** looked into that and found that federal law did allow for only identifying information to be shared between the parties. **SEN. HALLIGAN** said therefore, that part of the bill would be OK.

CHAIRMAN GROSFIELD said further executive action would be held for one more day.

EXECUTIVE ACTION ON SB 128

DISCUSSION:

SEN. DUANE GRIMES explained that he was looking into some amendments on the bill. He had found out that the FBI had identified 80 teenagers (aged 12-17) that were in the prostitution circuit. Therefore, he was researching the possibility of a committee bill on a task force to look into the problem. Also, since it had come to light that the pimps were rather wealthy, he had **Al Smith** work on some civil remedy language that the committee may want to consider. Thirdly, because the circumstances surrounding **Ms. Smith, the lady who testified on the bill**, was that she was virtually a slave, coerced and seduced into the lifestyle and held by force, then she was manipulated by the media and paraded on an HBO special, he was considering a resolution that would ask the various entertainment industries to exercise extreme caution since so many young ladies were being recruited into this heinous lifestyle. Because of these issues, **SEN. GRIMES** asked that the bill not be passed out of committee today.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 24, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 52, SB 254 1/19/2001
Executive Action: SB 222, SB 132, SB 170, HB 52
SB 254

HEARING ON HB 52

Sponsor: **REP. DAVE GALLIK, HD 52, HELENA**

Proponents: **Mike McCabb, Colonel Montana National Guard**

Opponents: None

Motion/Vote: **SEN. HALLIGAN** moved **SB 132 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 170

Motion: **SEN. O'NEIL** moved **SB 170 BE AMENDED. EXHIBIT(jus19a06)**

Discussion:

SEN. O'NEIL said this bill will allow hearsay to be used so that the child is taken away, within the amendment he is proposing that an investigative protocol is used. **EXHIBIT(jus19a07)**

Substitute Motion: **SEN. HALLIGAN** motioned to **AMEND.**

Discussion:

SEN. HALLIGAN said he the bill needs to be cleaned up with language and this amendment gives change to existing law. He stated that this language may be troublesome and referenced page 17, "hearsay evidence of statements made by the affected youth is admissible at the hearing" and advised it should be taken out. It becomes intimidating to youths and adults to have video tape or any type of taping done for investigative measures.

SEN. O'NEIL stated this bill increases the use of hearsay and the amendment is still allowing any hearsay to be used in the show cause hearing when they need to protect a child. He felt that without the amendment there will be a big change to the law and making it more dangerous to families.

Vote: **Substitute Motion to be AMENDED carried unanimously.**

Substitute Motion: **SEN. O'NEIL** made a motion to **AMEND.**

Discussion:

SEN. O'NEIL said this motion would include language to say "hearsay evidence of statements made by the affected child to a department social worker or to a professional qualified as an expert by the court is admissible at the hearing only if an audio or video recording of the statements by the child are made available to all parties prior to the hearing".

SEN. HALLIGAN commented this affects rules of procedures as example, hearsay statements could be made to a medical professional. He said that rules of evidence give an utterance and the same rules that apply to adults would apply to children regarding the hearsay and it goes back to existing law.

SEN. O'NEIL said the substitute motion was not applying to excited utterances because medical records would still be allowed within the hearing. He added that all hearsay evidence would be permissible except a for a social worker or other professional interviewer.

Vote: Substitute Motion **failed 8-1** with **SEN. O'NEIL** voting yes.

Motion: **SEN. HALLIGAN** moved that **SB 170 DO PASS AS AMENDED.**

Vote: Motion that **SB 170 DO PASS AS AMENDED carried unanimously.**

EXECUTIVE ACTION ON HB 52

Motion: **SEN. WALT MCNUTT** moved that **HB 52 BE CONCURRED IN.**

Discussion: None

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 254

Motion: **SEN. HALLIGAN** moved that **SB 254 DO PASS.**

Discussion: None

Vote: Motion that **SB 254 DO PASS carried unanimously.**

SENATE Judiciary
EXHIBIT NO. 6
DATE 01/24/01
BILL NO. SB 170

Amendments to Senate Bill No. 170
1st Reading Copy

Requested by Senator Jerry O'Neil

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 23, 2001 (4:35PM)

1. Page 17, line 29.
Following: "child"
Insert: "to a department social worker or to a professional qualified as an expert by the court"

2. Page 17, line 30.
Following: "hearing"
Insert: "only if an audio or video recording of the statements by the child is made available to all parties prior to the hearing"

- END -

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 01/24/01
BILL NO. 170

January 23, 2001

To: Montana State Senator J. O'Neil
Committee Hearing Senate Bill No.116
57th Montana State Legislature

From: Richard Rough, M.S.Sp.Ed.
208 Caroline Rd.
Kalispell, MT. 59901
406-755-5420 (work)
406-756-6529 (home)

Re:

Dear Senator O'Neil,

I am writing you regarding my concern for the proposed Senate Bill No.116 introduced by Montana State Senator E. Stonington which is presently in Hearing to establish an Act generally revising the Laws relating to Child Abuse and Neglect, and providing that the Montana Rules Of Evidence apply to Proceedings. My interest in the matter before the Senate Committee is longstanding both as a father of four and grandparent of three, and as a human service specialist with the Department of Public Health and Human Services for the past fifteen years, including former child protective and adult protective social work. My education includes teaching, graduate studies in Special Education with a major in counseling, graduate study in child sexual abuse, and child abuse/neglect training by the Department. Currently, I am a Regional Program Officer with the Community Services Bureau. Specifically, I write to bring to your attention the need for, and my support of, video recording interviews with children and other family members when conducting investigations in order to achieve a proper determination in abuse/neglect situations.

The use of video recording in the investigative protocol is a valuable and relatively inexpensive means to enhance investigative performance, which has been endorsed by many leading national researchers for ten to fifteen years. There are numerous reasons why the experts prefer and advocate for investigative protocol which makes use of the many advantages of this technological technique when used in a professionally acceptable manner. Video taping records the interview process. It records and preserves statements, body language, and emotion of the participants. It distinguishes and validates professional and age appropriate interview procedure and reduces subjectivity of interview interpretation. It records and preserves evidence for the court. Video recording is a valuable means of training for investigative personnel to refine and improve the interview process. Video recorded interviews can also be valuable to counselors in the treatment of familial dysfunction and to therapists in the treatment of victims for symptoms caused by abuse and neglect.

116
SB [redacted]
exh. 4

Presently, most investigative interviews in Montana are not conducted using video recording with its many advantages, but they should be. Mandatory video recording should be required and preserved as an essential part of the case file. The entire system from investigators, to therapists, to educators, to the courts would benefit from this practice. Even more importantly, Montana's most valuable and precious resource of all, the children, will benefit from this practice. I strongly support and advocate for the use of interview video recording in investigation of child abuse and neglect.

I wish to express my appreciation to you and to the Senate Committee in Hearing to establish an Act generally revising the Laws relating to Child Abuse and Neglect for allowing me to express my concern and for the serious consideration I know you will give this matter.

Sincerely,

Richard Rough

SENATE BILL NO. 170

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING ~~SECTION~~ SECTIONS 41-3-413 AND 41-3-1014, MCA."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COMM ON JUDICIARY

SENATE BILL NO. 170

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ~~MEDIATION~~ ALTERNATIVE DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING ~~SECTION~~ SECTIONS 41-3-413 AND 41-3-1014, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; ~~and~~

(f) recognize that a child is entitled to assert the child's constitutional rights~~.~~;

~~(2) It is the policy of this state to:~~

~~(a) protect, whenever possible, family unity;~~

(G) ENSURE THAT ALL CHILDREN HAVE A RIGHT TO A HEALTHY AND SAFE CHILDHOOD IN A NURTURING PERMANENT FAMILY OR IN THE CLOSEST POSSIBLE SUBSTITUTE;

~~(b)~~(g)(H) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

~~(c)~~(h)(I) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority ~~and~~ or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting ~~the~~ a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

~~(d)~~(i)(J) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

~~(3)~~(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

~~(4)~~(3) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and

its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(4)~~ (6) and ~~(5)~~ (7), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if

disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

~~(4)~~(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(5)~~(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(4)~~ (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

~~(6)~~(8) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

~~(7)~~(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant

to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department ~~of public health and human services~~, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) ~~A~~ An abuse and neglect petition must be filed within ~~48 hours~~ 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to [section 14].

(4) The department ~~of public health and human services~~ shall make the necessary arrangements for the ~~youth's~~ child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-402;

(ii) temporary investigative authority, as provided in [section 7];

(iii) temporary legal custody, as provided in [section 11];

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-421;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

~~(1)~~(2) The county attorney, attorney general, or an attorney hired by the county ~~is responsible for filing~~ shall file all petitions under this chapter~~, except as provided in 41-3-303~~. ~~The~~ A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the ~~allegation~~ petition.

~~(2)~~(3) ~~Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The~~ Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

~~(3)~~(4) ~~A~~ An abuse and neglect petition ~~alleging abuse or neglect~~ is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

~~(4)~~(6) ~~The~~ Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the ~~youth~~ child named in the petition,

if residing in the state, must be served personally with a copy of ~~the petition and summons~~ all petitions at least 5 ~~working~~ days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

~~(5)~~(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

~~(6)~~(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

~~(7)~~(9) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

~~(8)~~(10) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

~~(9)~~(11) ~~The~~ An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the ~~youth~~ child and the name and address of the ~~youth's~~ child's parents or guardian or person having legal custody of the ~~youth~~ child;

(c) state the names, addresses, and relationship to the ~~youth~~ child of all persons who are necessary parties to the action.

~~(10) The petition may ask for the following relief:~~

~~(a) temporary investigative authority and protective services, as provided in 41-3-402;~~

~~(b) temporary legal custody, as provided in 41-3-406;~~

~~(c) appointment of a guardian pursuant to 41-3-421;~~

~~(d) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or~~

~~(ii) appointment of a guardian; or~~

~~(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that~~

~~may be required for the best interests of the child.~~

~~(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.~~

~~(12) The petition may be modified for different relief at any time within the discretion of the court.~~

~~(13)~~(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(13) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order.

(14) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(15) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the ~~state~~ COURT is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(16) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 5. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for ~~temporary investigative authority~~ immediate protection and emergency protective services -- order -- service.** (1) (a) In a case in which it appears that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for ~~temporary investigative authority~~ immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(2)~~(b) A petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected.

~~(3)~~(c) The petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department report stating in detail the facts upon which the request is based. The petition, affidavit, or report of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. ~~Except as provided in 41-3-403, the~~ The parents, if available in person or by electronic means, must be given an opportunity to ~~address~~ present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-401."

NEW SECTION. **Section 6. Show cause hearing -- order.** (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to [section 14] or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-411; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a local citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-404(2) are met. If not made at the show cause hearing, adjudication under 41-3-404 must be made within the time limits required by 41-3-404 unless adjudication occurs earlier by stipulation of the parties pursuant to [section 14] and order of the court.

NEW SECTION. **Section 7. Temporary investigative authority.** The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-401.

Section 8. Section 41-3-403, MCA, is amended to read:

"41-3-403. ~~Order for immediate protection of youth~~ Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. ~~(1)(a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.~~

~~(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or~~

~~other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.~~

~~(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.~~

~~(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.~~

~~(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.~~

~~(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

(1) ~~Reasonable~~ The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent

placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services ~~are not required~~ if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person

has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; ~~and~~ or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

~~(4)~~(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(6) The court may grant the following kinds of relief:~~

~~(a) right of entry by a peace officer or department worker;~~

~~(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;~~

~~(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;~~

~~(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;~~

~~(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;~~

~~(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or~~

~~(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court~~

~~hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.~~

~~(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:~~

~~(a) limited emancipation;~~

~~(b) temporary legal custody;~~

~~(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or~~

~~(d) dismissal.~~

~~(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).~~

~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.~~"

Section 9. Section 41-3-404, MCA, is amended to read:

"**41-3-404. ~~Adjudicatory hearing~~ Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under [section 6]. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to [section 14] and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

~~(1)~~(2) ~~In the adjudicatory hearing~~ The court may make an adjudication on a petition under 41-3-401~~,~~ if the court ~~shall determine~~ determines by a preponderance of the evidence ~~whether~~, except as provided in the federal Indian Child Welfare Act, if applicable, that the ~~youth~~ child is a youth in need of care and ~~ascertain~~ ascertains, as far as possible, the cause. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an

adjudicatory hearing. ~~Hearsay evidence of statements made by the affected child is admissible at the hearing.~~ Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

~~(2)~~(3) The court shall hear evidence regarding the residence of the ~~youth~~ child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the ~~youth~~ child.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the ~~youth~~ child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to ~~41-3-403~~ 41-3-402 or [section 6] must be vacated.

(b) If the ~~youth~~ child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within ~~30~~ 20 days, as provided in 41-3-406(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in ~~41-3-403(6)~~ 41-3-402(2).

(6) (a) Before making an adjudication, the court shall make written findings on issues including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not

already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 10. Section 41-3-406, MCA, is amended to read:

"**41-3-406. ~~Dispositional~~ Disposition -- hearing ~~-- temporary legal custody~~ -- order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to [section 14] or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-404. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-404. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

~~(1)~~(3) If a ~~youth~~ child is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ child:

(a) permit the ~~youth~~ child to remain with the ~~youth's~~ child's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the

education, care, and maintenance of the ~~youth~~ child and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ child;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

~~(2) To grant temporary legal custody, the court shall make a finding that:~~

~~(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and~~

~~(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.~~

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to [section 11(1)] or subsection ~~(2) or (3)~~ (4) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:~~

~~(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;~~

~~(b) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right of adoption; or~~

~~(iii) appointment of a guardian pursuant to 41-3-607;~~

~~(c) long-term custody pursuant to 41-3-412;~~

~~(d) appointment of a guardian pursuant to 41-3-421; or~~

~~(e) dismissal.~~

~~(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).~~

~~(7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.~~

~~(8)~~(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

NEW SECTION. **Section 11. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-404, the court may grant temporary legal custody under 41-3-406 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) planned alternative permanent placement pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(4) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(6) In implementing the policy of this section, the child's health and safety are of paramount concern.

(7) A petition requesting temporary legal custody must be served as provided in 41-3-401.

Section 12. Section 41-3-412, MCA, is amended to read:

"41-3-412. Permanency plan hearing. (1) (a) (i) ~~A~~ Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-403, 41-3-406(5), or [section 11(1)]; and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first~~, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian~~.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed, the court shall make a finding whether the department has made

reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan. ~~must contain the:~~

~~(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;~~

~~(b) extent to which the parent or guardian cooperated and used the services provided;~~

~~(c) status of the child, including the child's mental, physical, and psychological health; and~~

~~(d) plan for permanency for the child, including specific times for achieving the plan.~~

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. ~~If the~~ The court ~~finds that~~ shall make findings on whether the permanency plan is in the best interests of the child~~, the~~ and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan~~, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed~~.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the ~~provisions~~ options provided in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court

hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) ~~If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following~~ Permanency options include:

~~(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;~~

(A) REUNIFICATION OF THE CHILD WITH THE CHILD'S PARENT OR GUARDIAN;

(B) ADOPTION;

~~(b)~~(C) appointment of a guardian pursuant to 41-3-421; or

~~(c)~~(D) ~~long-term custody~~ planned alternative permanent placement of a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a relative;

~~(i)~~(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(iii)~~(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; OR

~~(iv)(v) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) (6)(c)(vi)(A) through (6)(c)(v)(D) (6)(c)(vi)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care planned alternative permanent placement; or~~

~~(v)~~(vi)(v) the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other permanent placement ~~termination of parental rights to the child is not in the child's best interests~~ options for the child have been considered and found not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ the planned alternative permanent placement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 13. Section 41-3-420, MCA, is amended to read:

"41-3-420. Treatment plan -- contents -- changes. (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to [section 14]; or

(c) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in ~~a~~ temporary medical ~~facility or a facility for protection of the youth~~ or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

NEW SECTION. **Section 14. Stipulations.** Subject to approval by the court, a parent may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; or

(3) the disposition.

Section 15. Section 41-3-421, MCA, is amended to read:

"41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

~~(e) the child is at least 12 years old or the child is in a group of siblings, at least one of whom is at least 12 years old, and the guardianship is in the best interests of the siblings;~~

~~(f)~~(E) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

~~(g)~~(F) it is in the best interests of the child to remain or be placed with the potential guardian;

~~(h)~~(G) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

~~(i)~~(H) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except ~~a~~ for the department's provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any ~~court appointed~~ court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

NEW SECTION. **Section 16. Repealer.** ~~Section~~ SECTIONS 41-3-413 AND 41-3-1014, MCA, ~~is~~ ARE repealed.

NEW SECTION. **Section 17. Codification instruction -- code commissioner instruction.** (1) [Sections 6, 7, 11, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 6, 7, 11, and 14].

(2) The code commissioner is instructed to rearrange and renumber the following sections in Title 41, chapter 3, part 4, in the following order:

41-3-401,

41-3-403,
41-3-402,
[section 6],
[section 7],
[section 14],
41-3-404,
41-3-406,
[section 11],
41-3-420,
41-3-421,
41-3-412,
~~41-3-413,~~
41-3-411.

(3) The code commissioner is instructed to renumber:

(a) 41-3-303, 41-3-409, 41-3-1115, 41-3-1160, and 41-3-1161 as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to the renumbered sections;

(b) 41-3-408 as a new part in Title 41, chapter 1, and to insert "of public health and human services" after "department" in subsection (1) of the renumbered section;

(c) Title 41, chapter 3, part 7, as a new chapter in Title 52;

(d) Title 41, chapter 3, part 11, as a new part in Title 52, chapter 2; and

(e) Title 42, chapter 8, as a new chapter in Title 52.

NEW SECTION. **Section 18. Coordination instruction.** (1) If __ Bill No. ____ [LC 261] and [this act] are both passed and approved, then ____ Bill No. ____ [LC 261] is void.

(2) If __ Bill No. __ [LC 518] and [this act] are both passed and approved, then 41-3-401(6) contained in [this act] must read as follows: "(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in [sections 1 and 2 of LC 518]."

NEW SECTION. **Section 19. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 5, 2001 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **SB 1 - 2-23-01**
SB 20 - 1-19-01

SB 132 - 1-19-01
SB 170 - 1-19-01
SB 254 - 1-19-01

Executive Action: None

HEARING ON SB 254

Sponsor: **Senator Mike Halligan, SD 34, Missoula** said currently there is a Victim's Assistance Program in the State of Montana. It is administered under the Board of Crime Control, which is administratively attached to the Department of Justice. Over the past decade the Legislature has passed many Victim's Assistance Programs by consolidating and coordinating them. It is essentially a designated planning and program development agency and not necessarily an implementation agency.

The first section of the Bill relates to the transfer from the Board of Crime Control to Mike McGrath, Attorney General, Department of Justice. The purpose is for accountability issues.

Proponents: **Mike McGrath, Attorney General, State of Montana. EXHIBIT(juh50a01)**

Jim Oppedahl, Executive Director, Montana Board of Crime Control.

Sharon Hoff Brodowy, Montana Catholic Conference EXHIBIT(juh50a02)

Ellen Bush, Victim Information Specialist, Department of Corrections.

Opponents: None

Questions from Committee Members and Responses: **Reps. Clark, Peterson to Mr. McGrath, Mr. Oppedahl.**

Closing by Sponsor: **Senator Halligan closed the Hearing on SB 254.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 13.4}

HEARING ON SB 20

Julie Millam, Executive Director, Christian Coalition of Montana.

Jim Campbell, Volunteer, Montana Catholic Conference

Rosemary Miller, Executive Director, Catholic Social Services for Montana.

Al Davis, Montana Mental Health Association, Helena

Debra Kottel, Self, Great Falls

Stacey Anderson, Executive Director, Montana NARAL and Montanans for Choice.

Rebecca Moog, Montana Women's Lobby, Helena

Opponents: **Cindy Morrison Swank, Helena, Taxpayer EXHIBIT(juh50a05)**

Questions from Committee Members and Responses: **Reps. Laszloffy, Adams, Noennig, Rice, Holden, Clark, Mangan, Gutsche, Harris, Eggers, Shockley to Senator Halligan, Ms. Miller, without objection, Shirley Brown, Program Bureau Chief, Child and Family Services; Colleen Murphy, Executive Director, Montana Chapter National Association of Social Workers, EXHIBIT(juh50a06)**

{Tape : 1; Side : B; Approx. Time Counter : 10.9 - 29.9}
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29.7}
{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 8.6}

Closing by Sponsor: **Senator Halligan closed the Hearing on SB 132.**

EARING ON SB 170

Sponsor: **Senator Mike Halligan, SD 34, Missoula** said this Bill is to revise Child Abuse and Neglect Laws to consolidate whatever the principle or purpose is in the existing statutes and make them understandable. The key part of the Bill is that it adds rights to parents for the first time. A show-cause hearing must be held within 10 days.

This Bill will allow for hearings and resolutions quicker. Electronics will have to be used in rural areas. The fiscal note indicates a $10,000 impact and that is mainly the operational costs for the mediation or alternative dispute resolution process. There will be more children going home quicker and more children adopted quicker under this Bill.

Proponents: **Ann Gilkey, Court Assessment Program, EXHIBIT(juh50a07)**

{Tape : 2; Side : B; Approx. Time Counter : 8.6 - 29.6}
{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 3.9}

Shirley Brown, Program Bureau Chief, Child and Family Services.

Colleen Murphy, Executive Director, National Association of Social Workers. EXHIBIT(juh50a08)

Opponents: None

Questions from Committee Members and Responses: **Reps. Peterson, Holden, Gallus, Curtiss, Eggers, Mangan, Laszloffy to Senator Halligan, Ms. Gilkey, Ms. Brown.**

{Tape : 3; Side : A; Approx. Time Counter : 3.9 - 29.8}
{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 15}

Closing by Sponsor: **Senator Halligan closed the Hearing on SB 170** by saying this Bill tries, for the first time, with the help of the agency, to build a process to revise Child Abuse and Neglect Laws as well as add some help for parents for early hearings and notifications.

HEARING ON SB 1

Sponsor: **Senator Duane Grimes, SD 20, Clancy** said this Bill is important for employers and employees all across the State of Montana. Employment reference information is the most valuable source of information about the background of individual employees to make sure the right person gets the right job. Obtaining reference information can potentially involve liability and that is why so many employers are unwilling to give reference information. They are legitimately fearful about providing such information and have been at risk because of the Defamation Law. The Bill is being amended for the liable and slander section in the statutes.

This Bill deals with common law privileges or protections in making defamatory statements. The first kind of privilege that is dealt with is absolute privilege. An absolute privilege is total immunity granted on the basis of a speaker's position or status. They are used for complete freedom of speech as

HOUSE OF REPRESENTATIVE

ROLL CALL

JUDICIARY COMMITTEE

DATE 3-5-01

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	✓		
REP. AUBYN CURTISS	✓		
REP. BILL EGGERS	✓		
REP. STEVE GALLUS	✓		
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE	✓		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

EXHIBIT 7
DATE 3-05-01
SB 170

The Supreme Court of Montana
Office of the Court Administrator
Patrick A. Chenovick

COURT ASSESSMENT PROGRAM
Sherry Meador
Coordinator
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TESTIMONY IN SUPPORT OF SB 170
Submitted by Ann Gilkey
Court Assessment Program
March 5, 2001

The current statutes addressing child protective servcies are confusing and do not provide enough guidance to courts and families involved in the system. Further, federal law (Adoption and Safe Families Act) requires all states receiving federal funds for foster care to shorten the timelines for permanency for abused and neglected children, enhance safety considerations for children, while ensuring that states are making every reasonable attempt to keep children with their parents. Montana implemented the basic requirements of ASFA last session, but I believe that the laws need to be amended to better comply with the intent of the federal law and assist Montana families with more legal safeguards.

Major provisions of SB170 are:

- General reorganization and renumbering of statutes;
- Focuses state policy on health and safety of children (Sections 1, 5, and 8);
- Clarifies that a child's school records may be shared with persons with a need to know the information and drug treatment records may be shared only as otherwise allowed by federal law (Section 2);
- Requires an initial court hearing within 10 working days of an emergency removal of a child from the child's home (Section 3 and 6);
- Clarifies the types of abuse and neglect petitions, when they may be filed, states the burdens of evidentiary proof, and makes repeated reference to the Indian Child Welfare Act, as it differs from state law (Sections 4 and 5);
- Allows for resolution of matters outside of the courtroom by allowing for the use of standing masters to conduct hearings and alternative dispute resolution to facilitate agreements (Section 4);

(over)

- Provides for enhanced notice requirements to parents at various stages and in various documents, including the reasons for an emergency removal, time lines that must be adhered to, and the parents rights and responsibilities (Sections 4 and 13);

- Allows testimony at the initial hearings to be by electronic means, when necessary (Sections 5 and 6) ;

- Describes when temporary investigative authority should be requested by the state and limits an order for TIA to 90 days (Section 7);

- Clarifies what might constitute reasonable efforts to provide reunification services. When there is a judicial finding that such efforts need not be made, provides that the burden of evidentiary proof must be by clear and convincing evidence (Section 8);

- Ties the adjudicatory hearing to the show cause hearing and requires that it be held within 90 days of the show cause hearing (Section 9);

- Requires that a dispositional hearing be held within 20 days of an adjudication and clarifies the procedure for a dispositional hearing (Section 10);

- Clarifies purpose of permanency hearing (Section 12);

- Deletes the 12 years of age requirement for a child to placed in long term foster care or guardianship (Sections 12 and 14); and

- Clarifies how and when stipulations may be used (Sections 13 and 14).

These are good changes to existing law
I urge your support of SB 170.

NASW
NATIONAL ASSOCIATION
OF SOCIAL WORKERS
Montana Chapter

EXHIBIT 8
DATE 3-05-01
SB 170

Revise Child Abuse and Neglect Laws. Support Senate Bill 170

Sponsor: Mike Halligan

Status: Passed Senate transmitted to House Committee

Key Points: This bill is in line with national NASW policy protecting the best interests of children.

- Adds clauses to state policy that the child's health and safety are of paramount concern and that all children have a right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute.
- Codifies the Federal Adoption and Safe Family Act Time lines in the Montana Code Mandates that the Department keep the clients informed of the Time lines in the treatment plans given to the parents.
- Codifies the language of reasonable efforts
- Abuse and neglect petitions must be given the highest preference by the court is setting hearing dates.
- Counsel must be appointed for indigent parents at the time request made to the Court for a determination that preservation or reunification services need not be provided.
- Adds a clause that at any stage of the preceding court may order alternative dispute resolution proceedings or parties may voluntarily participate in alternative dispute resolutions such as family group conferences, mediation, or settlement conferences.
- Adds relief's the department may have the court order including requiring the perpetrator of the alleged child abuse and neglect be removed from the home so the child can remain in the home. Requiring the parent provide the department with the name and address of the other parent, and extended family members who may be placement options.

25 South Ewing Suite 406
Helena, MT 59601
406/449-6208
fax 406/449-2533

Revise Child Abuse and Neglect Laws and Placement or Adoption. Support Senate Bill 116

Sponsor: Emily Stonington

Status: Passed Senate transmitted to House Committee

Key Points:

- Allows the Division of Child & Family Services (CFS) to assess reports of abuse or neglect to determine the action necessary, rather than mandating that all reports be investigated.
- If it becomes necessary to remove a child the CFS shall place the child with the non-custodial birth parent (unless parental rights terminated) or with child's extended family when the placement with the extended family is approved by the CFS.
- Defines concurrent planning, family group conference, permanency planning.
- Defines physical neglect
- Defines Social Worker
- Allows the court to grant relief's (similar to SB 170) such as requiring the perpetrator to be removed; to require parent to provide CFS with name and address of other parent; require parent to provide names and addresses of extended family members who may be considered as placement options for the child.
- The CFS shall require a criminal background investigation of each applicant by means of fingerprint check by the Montana Department of Justice and FBI.
- Prospective adoptive placement in direct parental placement adoption the preplacement evaluation must be conducted by either a Licensed Social Worker or licensed child placing agency
- In direct parental placement adoption the post placement evaluation period must be supervised and evaluated by a Licensed Social Worker or other person appointed, contracted with or employed by the CFS or Child Placing Agency.

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-5-01

BILL NO. SB 170 SPONSOR(S) Sen. Halligan

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Shirley K. Brown	Helena	Child & Family Svcs DPHHS
(P) O I	Al Davis	Helena	MMHA
(P) O I	Ann G. Hickey	Helena	Const Assessment Bureau
(P) O I			
(P) O I	Colleen Murphy	Helena	MT-NASW
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.frm

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 23, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Joan Hurdle (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: **SJ2 - BCIAA - 18-0**
SB 386 - BCIAA - 15-4

SB 170 - BCIAA - 16-2
SB 111 - TABLE
SB 267 - TABLE

EXECUTIVE ACTION ON SJ2

Motion: **REP. ADAMS** moved that **SJ2 BE CONCURRED IN. #1**

Motion/Vote: **REP. SHOCKLEY** moved that **SJ2 BE AMENDED. #2 Motion carried unanimously. EXHIBIT(juh66a01)**

Discussion: **Reps. Laszloffy.**

Motion/Vote: **REP. ADAMS** moved that **SJ2 BE CONCURRED IN AS AMENDED. #3 Motion carried unanimously 19-0**

EXECUTIVE ACTION ON SB 386

Motion: **REP. GUTSCHE** moved that **SB 386 BE CONCURRED IN. #4**

Discussion: **John MacMaster explained the procedure to address conflict in Bills, for instance this Bill and HB 146, and how his office resolves the conflict in the best possible way.**

Discussion: **Reps. Shockley, Gutsche, Noennig, Newman.**

{Tape : 1; Side : A; Approx. Time Counter : 0.1 - 30.1}

Rep. Mangan referred to the University of Great Falls study, EXHIBIT(juh66a02) Reps. Eggers, Shockley, Peterson, Wolery, Newman, Noennig, Mangan, Gutsche Curtiss, discussed the Hearings and merits of both Bills, SB 386 and HB 146 and their concerns.

Mike Ferriter, Division Administrator, Department of Corrections, without objection, said the difficult situation SB 386 puts the Department in is this Bill is a mirror of HB 65, which was passed last Session. There are some words that were changed and makes it mandatory now that the Department of Corrections do this pilot concept, however, some of the problematic areas is the fact that the Department, if the judicial district chooses to lead this concept if things aren't going well, will bail out and they lose some of their ability to control the budget.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 29.7}

Motion: REP. ADAMS withdrew his motion (#6) #8

Motion/Vote: REP. GUTSCHE moved that SB 386 BE CONCURRED IN AS AMENDED. #9 Motion carried 15-4 with Reps. Shockley, Adams, Holden and Rice voting no. Rep. Mangan abstained.

EXECUTIVE ACTION ON SB 170

Motion: REP. ADAMS moved that SB 170 BE CONCURRED IN. #10

Discussion: Reps. Holden, Clark, Gallus, Clancy, Gutsche, to Chuck Hunter, Department of Public Health, without objection, concerning the privacy issue that this in no way is in discord with federal law that protects students' privacy. Mr. Hunter said that is correct.

Motion: REP. LASZLOFFY moved that SB 170 BE AMENDED and withdrew #2. #11 EXHIBIT(juh66a04)

Vote: Laszloffy amendment carried 11-8 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Holden, Hurdle and Newman voting no.

Discussion: Reps. Gutsche, Noennig, Newman to Mr. Hunter and Ann Gilkey, Court Assessment Program for clarification.

Motion: REP. PETERSON moved that SB 170 BE AMENDED. #12 EXHIBIT(juh66a05)

Discussion: Reps. Peterson, Gallus, Noennig, Newman, Eggers to Mr. Hunter, without objection.

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 29.1}

Discussion: Reps. Peterson, Shockley.

Vote: Peterson amendment motion #12 carried unanimously 19-0.

Discussion: Mr. MacMaster explained amendments EXHIBIT(juh66a06).

Motion/Vote: REP. NOENNIG moved coordinating amendments SB 170 EXHIBIT 6. #13. Motion carried unanimously 18-0.

Motion/Vote: REP. ADAMS moved that SB 170 BE CONCURRED IN AS AMENDED. Motion carried 16-2 with Reps. Laszloffy and Adams voting no. #14

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3-23-01

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	✓		
REP. AUBYN CURTISS	✓		
REP. BILL EGGERS	✓		
REP. STEVE GALLUS	✓		
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE			
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

EXHIBIT 4
DATE 3-23-01
SB 170

Amendments to Senate Bill No. 170
3rd Reading Copy

Requested by Representative Jeff Laszloffy

For the House Judiciary Committee

Prepared by John MacMaster
March 12, 2001 (2:47PM)

1. Page 8, line 2.
Following: "~~working~~"
Insert: "working"

2. Page 13, line 10.
Following: "30"
Insert: "working"

3. Page 19, line 20.
Following: "5"
Insert: "working"

4. Page 23, line 8.
Following: "least"
Insert: "working"

5. Page 23, line 19.
Following: "least"
Insert: "working"

- END -

EXHIBIT 5
DATE 3-23-01
SB 170

Amendments to Senate Bill No. 170
3rd Reading Copy

Requested by Representative Ken Peterson

For the House Judiciary Committee

Prepared by John MacMaster
March 6, 2001 (12:58PM)

1. Page 9, line 14.
Following: "order."
Insert: "If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding."

- END -

EXHIBIT 6
DATE 3-23-01
SB 170

March 16, 2001

TO: House Judiciary Committee

FROM: John MacMaster

--There are four conflicts between SB 116, which is in the House Human Services Committee awaiting action as of this date, and SB 170, which is in the House Judiciary Committee awaiting action as of this date. This memo explains the conflicts and proposes that the House Judiciary Committee amend SB 170 to resolve the conflicts by coordination instructions inserted in SB 170.

--The first conflict is that SB 170 repeals 41-3-413 and SB 116 amends that section by inserting new language. SB 170 puts the repealed section back into the law, by an amendment to 41-3-412. This amendment appears at line 29 of page 22 of SB 170, and it includes the new language that SB 116 inserts into 41-3-413. Therefore, the best resolution of the conflict is to allow the SB 170 repeal of 41-3-413 and the SB 116 amendment of that section to remain and to insert into SB 170 a Coordination Instruction stating that if SB 116 and SB 170 are **both** passed and approved the amendment in SB 116 to 41-3-413 is void.

--The second conflict is similar to the first conflict. SB 116 amends subsection (6) of 41-3-403 by inserting new language and SB 170 deletes subsection (6) of 41-3-403. However, SB 170 puts most of the language in the deleted subsection (6) back into the law as part of 41-3-402(2). This appears at page 10, line 28 through page 11, line16, of SB 170, and it includes most of the new language that SB 116 inserts into subsection (6) of 41-3-403. Therefore, the best resolution of the conflict is to:

(1) allow the SB 116 amendment of subsection (6) of 41-3-403 and the SB 170 deletion of that subsection to remain and to insert into SB 170 a Coordination Instruction stating that if SB 116 and SB 170 are **both** passed and approved the amendments in SB 116 to subsection (6) of 41-3-403 are void; and

(2) Amend into SB 170 that part of the language that SB 116 adds to subsection (6) of 41-3-403 and that SB 170 leaves out of the law by the SB 170 deletion of that subsection (6) and reinsertion of that subsection in another place in the law. The amendment would amend SB 170 by inserting on page 10, line 29, following the word "relief", the phrase ", which does not constitute a court-ordered treatment plan under 41-3-420".

--The third conflict and its best resolution are similar to the second conflict. SB 116 amends subsection (7) of 41-3-406 by inserting new language and SB 170 deletes subsection (7) of 41-3-406. However, SB 170 puts the language in the deleted subsection (7) back into the law as subsection (4) of new section 11 of SB 170. This appears at page 22, line 11, of SB 170, and it includes the new language that SB 116 inserts into subsection (7) of 41-3-403. Therefore, the best resolution of the conflict is to allow the SB 116 amendment of subsection (7) of 41-3-403 and the SB 170 deletion of that subsection to remain and to insert into SB 170 a Coordination Instruction section stating that if SB 116 and SB 170 are **both** passed and approved the amendments in SB 116 to subsection (7) of 41-3-403 are void.

(over)

--The three Coordination Instructions referred to in the above three paragraphs can be combined in one new section that would be inserted near the end of SB 170.

--The fourth conflict is that the phrase inserted at page 24, line 11, and page 25, line 7 of SB 170 conflicts with SB 116 insertions of a similar but differently worded phrase, designed to mean the same thing, in the same two places in the MCA. Another section of SB 116 defines the SB 116 version of the phrase. SB 170 does not define the SB 170 version of the phrase. DPHHS wants SB 170 amended in the two places referred to above to substitute the phrase used in SB 116. If both bills are passed and approved, there's a direct conflict, but if SB170 is amended to conform to the SB 116 phrase, DPHHS will have what it wants and the conflict will be resolved.

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-23-01 Bill NO. SB 170 NUMBER #10

MOTION: Rep. Adams moved Be Amended

Name	AYE	NO
Rep. Jim Shockley, Chairman		
Rep. Jeff Laszloffy, Vice Chair Majority		
Rep. Paul Clark, Vice Chair Minority		
Rep. Darrel Adams		
Rep. Gilda Clancy		
Rep. Aubyn Curtiss		
Rep. Bill Eggers		
Rep. Steve Gallus		
Rep. Gail Gutsche		
Rep. Christopher Harris		
Rep. Linda Holden		
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman		
Rep. Mark Noennig		
Rep. Ken Peterson		
Rep. Diane Rice		
Rep. Bill Thomas		
Rep. Merlin Wolery		
Rep. Cindy Younkin		

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-23-01 Bill NO. SB 170 NUMBER #11

MOTION: Rep. Laszloffy moved an amendment Exhibit D ##4 Withdrew #2 Motion Carried 11-8

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority		✓
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers		✓
Rep. Steve Gallus		✓
Rep. Gail Gutsche		✓
Rep. Christopher Harris		✓
Rep. Linda Holden		✓
Rep. Joan Hurdle		✓
Rep. Jeff Mangan		
Rep. Brad Newman		✓
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

11 8

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-23-01 Bill NO. S.B 170 NUMBER #12

MOTION: Rep. Peterson moved an amendment 19-0
Motion Carried unanimously

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle	✓	
Rep. Jeff Mangan		
Rep. Brad Newman	✓	
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

19 0

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-23-01 Bill NO. SB 170 NUMBER #13

MOTION: Rep. Noennig moved conducting Amendment 7 Motion Carried unanimously.

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman	✓	
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

18 0

House of Representatives

Roll Call Vote

JUDICIARY COMMITTEE

DATE 3-23-01 Bill NO. SB 170 NUMBER #14

MOTION: Rep. Adams moved BOAA

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority		✓
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams		✓
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle		
Rep. Jeff Mangan		
Rep. Brad Newman	✓	
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	

16 2

HOUSE STANDING COMMITTEE REPORT

March 23, 2001

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 170** (third reading copy - blue) **be concurred in as amended**.

Signed: _____
Representative Jim Shockley, Chair

To be carried by Representative Gail Gutsche

And, that such amendments read:

1. Page 8, line 2.
Following: "~~working~~"
Insert: "working"

2. Page 9, line 14.
Following: "order."
Insert: "If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding."

3. Page 10, line 29.
Following: "relief"
Insert: ", which do not constitute a court-ordered treatment plan under 41-3-420"

4. Page 19, line 20.
Following: "5"
Insert: "working"

5. Page 23, line 8.
Following: "least 3"
Insert: "working"

Committee Vote:
Yes 16, No 2.

661343SC.hdc
3/23

6. Page 23, line 19.
Following: "least 3"
Insert: "working"

7. Page 24, line 11.
Following: "~~custody~~"
Insert: "a"
Strike: "alternative"
Strike: "placement of"
Insert: "living arrangement for"

8. Page 25, line 7.
Strike: "alternative"
Strike: "placement"
Insert: "living arrangement"

9. Page 29.
Following: line 30
Insert: "(3) If Senate Bill No. 116 and [this act] are both passed and approved, then the amendments in Senate Bill No. 116 to 41-3-403(6), 41-3-406(7), and 41-3-413 are void."

- END -

AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING SCHOOL DISTRICTS TO DISCLOSE CERTAIN INFORMATION TO THE COURT, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND A CHILD'S LEGAL REPRESENTATIVES; REQUIRING APPOINTMENT OF COUNSEL FOR INDIGENT PARENTS WHEN THE STATE REQUESTS A DETERMINATION THAT PRESERVATION OR REUNIFICATION SERVICES NEED NOT BE PROVIDED; ALLOWING ALTERNATIVE DISPUTE RESOLUTION IN CHILD ABUSE AND NEGLECT CASES; REQUIRING A SHOW CAUSE HEARING TO BE HELD WITHIN 10 DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, OF AN INITIAL PETITION; REQUIRING AN ADJUDICATION TO BE MADE WITHIN 90 DAYS OF A SHOW CAUSE HEARING; REQUIRING A DISPOSITIONAL HEARING TO BE HELD WITHIN 20 DAYS AFTER AN ADJUDICATORY ORDER; AMENDING SECTIONS 41-3-101, 41-3-205, 41-3-301, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-420, AND 41-3-421, MCA; AND REPEALING SECTIONS 41-3-413 AND 41-3-1014, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; ~~and~~

(f) recognize that a child is entitled to assert the child's constitutional rights.;

~~(2) It is the policy of this state to:~~

~~(a) protect, whenever possible, family unity;~~

(g) ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute;

~~(b)~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

~~(c)~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority ~~and~~ or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting ~~the~~ a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

~~(d)~~(j) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

~~(3)~~(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

~~(4)~~(3) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-205, MCA, is amended to read:

"41-3-205. **Confidentiality -- disclosure exceptions.** (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections ~~(4)~~ (6) and ~~(5)~~ (7), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

~~(4)~~(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

~~(5)~~(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection ~~(4)~~ (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the

subject of the proceeding.

~~(6)~~(8) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

~~(7)~~(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 3. Section 41-3-301, MCA, is amended to read:

"**41-3-301. Emergency protective service.** (1) Any child protective social worker of the department ~~of public health and human services~~, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) ~~A~~ An abuse and neglect petition must be filed within ~~48 hours~~ 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to [section 14].

(4) The department ~~of public health and human services~~ shall make the necessary arrangements for the ~~youth's~~ child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter

must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-402;

(ii) temporary investigative authority, as provided in [section 7];

(iii) temporary legal custody, as provided in [section 11];

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-421;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

~~(1)~~(2) The county attorney, attorney general, or an attorney hired by the county ~~is responsible for filing~~ shall file all petitions under this chapter. ~~The~~ A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the ~~allegation~~ petition.

~~(2)~~(3) ~~Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The~~ Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

~~(3)~~(4) ~~A~~ An abuse and neglect petition ~~alleging abuse or neglect~~ is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

~~(4)~~(6) ~~The~~ Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the ~~youth~~ child named in the petition, if residing in the state, must be served personally with a copy of ~~the petition and summons~~ all petitions at least 5 ~~working~~ working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

~~(5)~~(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

~~(6)~~(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

~~(7)~~(9) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

~~(8)~~(10) Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.

~~(9)~~(11) ~~The~~ An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the ~~youth~~ child and the name and address of the ~~youth's~~ child's parents or guardian or person having legal custody of the ~~youth~~ child;

(c) state the names, addresses, and relationship to the ~~youth~~ child of all persons who are necessary parties to the action.

~~(10) The petition may ask for the following relief:~~

~~(a) temporary investigative authority and protective services, as provided in 41-3-402;~~

~~(b) temporary legal custody, as provided in 41-3-406;~~

~~(c) appointment of a guardian pursuant to 41-3-421;~~

~~(d) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or~~

~~(ii) appointment of a guardian; or~~

~~(e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that may be required for the best interests of the child.~~

~~(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.~~

~~(12) The petition may be modified for different relief at any time within the discretion of the court.~~

~~(13)~~(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(13) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(14) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(15) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(16) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 5. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for ~~temporary investigative authority~~ immediate protection and emergency protective services -- order -- service.** (1) (a) In a case in which it appears that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for ~~temporary investigative authority~~ immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(2)~~(b) A petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a ~~youth~~ child is abused or neglected or is in danger of being abused or neglected.

~~(3)~~(c) The petition for ~~temporary investigative authority~~ immediate protection and emergency protective services must be supported by an affidavit signed by the county attorney, the attorney general,

or an attorney hired by the county or must be supported by a department report stating in detail the facts upon which the request is based. The petition, affidavit, or report of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. ~~Except as provided in 41-3-403, the~~ The parents, if available in person or by electronic means, must be given an opportunity to ~~address~~ present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-420:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-401."

Section 6. Show cause hearing -- order. (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to [section 14] or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations

contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-411; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a local citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-404(2) are met. If not made at the show cause hearing, adjudication under 41-3-404 must be made within the time limits required by 41-3-404 unless adjudication occurs earlier by

stipulation of the parties pursuant to [section 14] and order of the court.

Section 7. Temporary investigative authority. The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-401.

Section 8. Section 41-3-403, MCA, is amended to read:

"41-3-403. ~~Order for immediate protection of youth~~ Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. ~~(1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.~~

~~(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.~~

~~(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a~~

~~contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.~~

~~(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.~~

~~(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.~~

~~(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

(1) ~~Reasonable~~ The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. The court shall review the services provided by the agency.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services ~~are not required~~ if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate

homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; ~~and~~ or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

~~(4)~~(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5)~~(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be

inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home.

~~(6) The court may grant the following kinds of relief:~~

~~(a) right of entry by a peace officer or department worker;~~

~~(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;~~

~~(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;~~

~~(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;~~

~~(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;~~

~~(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or~~

~~(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.~~

~~(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:~~

~~(a) limited emancipation;~~

~~(b) temporary legal custody;~~

~~(c) termination of the parent-child legal relationship and permanent legal custody with the right~~

~~to consent to adoption; or~~

~~(d) dismissal.~~

~~(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).~~

~~(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.~~"

Section 9. Section 41-3-404, MCA, is amended to read:

"**41-3-404.** ~~**Adjudicatory hearing**~~ Adjudication -- **temporary disposition** -- findings -- order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under [section 6]. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to [section 14] and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

~~(1)~~(2) ~~In the adjudicatory hearing~~ The court may make an adjudication on a petition under 41-3-401, if the court ~~shall determine~~ determines by a preponderance of the evidence ~~whether~~, except as provided in the federal Indian Child Welfare Act, if applicable, that the ~~youth~~ child is a youth in need of care and ~~ascertain~~ ascertains, as far as possible, the cause. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

~~(2)~~(3) The court shall hear evidence regarding the residence of the ~~youth~~ child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the ~~youth~~ child.

~~(3)~~(4) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

~~(4)~~(5) (a) If the court determines that the ~~youth~~ child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to ~~41-3-403~~ 41-3-402 or [section 6] must be vacated.

(b) If the ~~youth~~ child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within ~~30~~ 20 days, as provided in 41-3-406(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in ~~41-3-403(6)~~ 41-3-402(2).

(6) (a) Before making an adjudication, the court shall make written findings on issues including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 10. Section 41-3-406, MCA, is amended to read:

"41-3-406. ~~Dispositional~~ Disposition -- hearing ~~-- temporary legal custody~~ -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to [section 14] or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days

after an adjudicatory order has been entered under 41-3-404. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-404. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

~~(1)~~(3) If a ~~youth~~ child is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ child:

(a) permit the ~~youth~~ child to remain with the ~~youth's~~ child's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the ~~youth~~ child and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ child;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing

is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

~~(2) To grant temporary legal custody, the court shall make a finding that:~~

~~(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and~~

~~(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.~~

~~(3)~~(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~(5) If the court finds that reasonable efforts are not necessary pursuant to [section 11(1)] or subsection ~~(2) or (3)~~ (4) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:~~

~~(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;~~

~~(b) termination of the parent-child legal relationship and either:~~

~~(i) permanent legal custody with the right of adoption; or~~

~~(iii) appointment of a guardian pursuant to 41-3-607;~~

~~(c) long-term custody pursuant to 41-3-412;~~

~~(d) appointment of a guardian pursuant to 41-3-421; or~~

~~(e) dismissal.~~

~~(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).~~

~~(7) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.~~

~~(8)~~(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 11. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-404, the court may grant temporary legal custody under 41-3-406 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) planned alternative permanent placement pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(4) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(6) In implementing the policy of this section, the child's health and safety are of paramount concern.

(7) A petition requesting temporary legal custody must be served as provided in 41-3-401.

Section 12. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) (a) (i) ~~A~~ Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-403, 41-3-406(5), or [section 11(1)]; and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first~~, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian~~.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed, the court shall make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is

combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan. ~~must contain the:~~

~~(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;~~

~~(b) extent to which the parent or guardian cooperated and used the services provided;~~

~~(c) status of the child, including the child's mental, physical, and psychological health; and~~

~~(d) plan for permanency for the child, including specific times for achieving the plan.~~

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. ~~If the~~ The court ~~finds that~~ shall make findings on whether the permanency plan is in the best interests of the child~~, the~~ and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan~~, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed~~.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the ~~provisions~~ options provided in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) ~~If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one~~

~~of the following~~ Permanency options include:

~~(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;~~

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

~~(b)~~(c) appointment of a guardian pursuant to 41-3-421; or

~~(c)~~(d) ~~long-term custody~~ a planned permanent ~~of~~ living arrangement for a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a relative;

~~(i)~~(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(ii)~~(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

~~(iv) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) through (6)(c)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care; or~~

~~(v)~~(v) the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other permanent placement ~~termination of parental rights to the child is not in the child's best interests~~ options for the child have been considered and found not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate ~~long-term custody~~ the planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 13. Section 41-3-420, MCA, is amended to read:

"**41-3-420. Treatment plan -- contents -- changes.** (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to [section 14]; or

(c) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in ~~a~~ temporary medical ~~facility or a facility for protection of the youth~~ or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency plan hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights."

Section 14. Stipulations. Subject to approval by the court, a parent may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; or

(3) the disposition.

Section 15. Section 41-3-421, MCA, is amended to read:

"**41-3-421. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies.** (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may be subsidized by the department under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

~~(e) the child is at least 12 years old or the child is in a group of siblings, at least one of whom is at least 12 years old, and the guardianship is in the best interests of the siblings;~~

~~(f)~~(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

~~(g)~~(f) it is in the best interests of the child to remain or be placed with the potential guardian;

~~(h)~~(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

~~(i)~~(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a for the department's provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any ~~court-appointed~~ court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 16. Repealer. Sections 41-3-413 and 41-3-1014, MCA, are repealed.

Section 17. Codification instruction -- code commissioner instruction. (1) [Sections 6, 7, 11, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 6, 7, 11, and 14].

(2) The code commissioner is instructed to rearrange and renumber the following sections in Title 41, chapter 3, part 4, in the following order:

41-3-401,

41-3-403,

41-3-402,

[section 6],

[section 7],

[section 14],

41-3-404,

41-3-406,

[section 11],

41-3-420,

41-3-421,

41-3-412,

41-3-411.

(3) The code commissioner is instructed to renumber:

(a) 41-3-303, 41-3-409, 41-3-1115, 41-3-1160, and 41-3-1161 as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to the renumbered sections;

(b) 41-3-408 as a new part in Title 41, chapter 1, and to insert "of public health and human services" after "department" in subsection (1) of the renumbered section;

(c) Title 41, chapter 3, part 7, as a new chapter in Title 52;

(d) Title 41, chapter 3, part 11, as a new part in Title 52, chapter 2; and

(e) Title 42, chapter 8, as a new chapter in Title 52.

Section 18. Coordination instruction. (1) If ___ Bill No. ____ [LC 261] and [this act] are both passed and approved, then ____ Bill No. ____ [LC 261] is void.

(2) If House Bill No. 223 and [this act] are both passed and approved, then 41-3-401(6) contained in [this act] must read as follows:

"(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date

set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in [sections 1 and 2 of House Bill 223]."

(3) If Senate Bill No. 116 and [this act] are both passed and approved, then the amendments in Senate Bill No. 116 to 41-3-403(6), 41-3-406(7), and 41-3-413 are void.

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -